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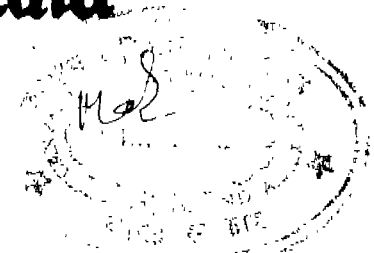
EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 29.10.1999.

BILL NO. 70 OF 1999

A Bill further to amend the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Securities Laws (Amendment) Act, 1999.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint.

Amendment of
section 2.

2. In section 2 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the principal Act),—

(a) after clause (a), the following clause shall be inserted, namely:—

'(aa) "derivative" includes—

(A) a security derived from a debt instrument, share, loan whether secured or unsecured, risk instrument or contract for differences or any other form of security;

(B) a contract which derives its value from the prices, or index of prices, of underlying securities;';

(b) in clause (h), after sub-clause (i), the following sub-clauses shall be inserted, namely:—

"(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;".

Insertion of new
section 18A.

3. After section 18 of the principal Act, the following section shall be inserted, namely:—

Contracts in
derivative.

"18A. Notwithstanding anything contained in any other law for the time being in force, contracts in derivative shall be legal and valid if such contracts are—

(a) traded on a recognised stock exchange;

(b) settled on the clearing house of the recognised stock exchange,

in accordance with the rules and bye-laws of such stock exchange."

Amendment of
section 21.

4. In the heading occurring above section 21 of the principal Act, the words "BY PUBLIC COMPANIES" shall be omitted.

Amendment of
section 22.

5. In section 22 of the principal Act,—

(a) after the words "public company", the words "or collective investment scheme" shall be inserted;

(b) after the word "company", the words "or scheme" shall be inserted.

Amendment of
section 23.

6. In section 23 of the principal Act, in sub-section (1), after clause (c), the following clause shall be inserted, namely:—

"(d) enters into any contract in derivative in contravention of section 18A or the rules made under section 30."

Amendment of
section 24.

7. In section 24 of the principal Act, after sub-section (2) in the *Explanation*, for sub-clause (b), the following sub-clause shall be substituted, namely:—

'(b) "director", in relation to—

(i) a firm, means a partner in the firm;

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.'

Insertion of new
section 27A.

8. After section 27 of the principal Act, the following section shall be inserted, namely:—

Right to receive
income from
collective
investment
scheme.

"27A. (1) It shall be lawful for the holder of any securities, being units or other instruments issued by collective investment scheme, whose name appears on the books of the collective investment scheme issuing the said security to receive and retain any income in respect of units or other instruments issued by the collective investment scheme declared by the collective investment scheme in respect thereof for any year, notwithstanding that the said security, being units or

other instruments issued by collective investment scheme, has already been transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by collective investment scheme from the transfer or has lodged the security and all other documents relating to the transfer which may be required by the collective investment scheme with the collective investment scheme for being registered in his name within fifteen days of the date on which the income in respect of units or other instruments issued by the collective investment scheme became due.

Explanation.—The period specified in this section shall be extended—

(i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the income in respect of units or other instrument issued by collective investment scheme;

(ii) in case of loss of the transfer deed by theft or any other cause beyond the control of the transferee, by the actual period taken for the replacement thereof; and

(iii) in case of delay in the lodging of any security, being units or other instruments issued by collective investment scheme, and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.

(2) Nothing contained in sub-section (1) shall affect—

(a) the right of a collective investment scheme to pay any income from units or other instruments issued by collective investment scheme which has become due to any person whose name is for the time being registered in the books of the collective investment scheme as the holder of the security being units or other instruments issued by collective investment scheme in respect of which the income in respect of units or other instruments issued by collective scheme has become due; or

(b) the right of transferee of any security, being units or other instruments issued by collective investment scheme, to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the company has refused to register the transfer of the security being units or other instruments issued by collective investment scheme in the name of the transferee."

9. For section 29A of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section for
section 29A.

"29A. The Central Government may, by order published in the Official Gazette, direct that the powers (except the power under section 30) exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Securities and Exchange Board of India or the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934."

Power to
delegate.

2 of 1934.

10. In section 30 of the principal Act, in sub-section (2), for clause (h), the following clause shall be substituted, namely:—

Amendment of
section 30.

"(h) the requirements which shall be complied with—

(A) by public companies for the purpose of getting their securities listed on any stock exchange;

(B) by collective investment scheme for the purpose of getting their units listed on any stock exchange;"

Amendment of
Act 15 of 1992.

11. In the Securities and Exchange Board of India Act, 1992,—

(i) in section 2, in sub-section (1), after clause (b), the following clause shall be inserted, namely:—

'(ba) "collective investment scheme" means any scheme or arrangement which satisfies the conditions specified in section 11AA;';

(ii) after section 11A, the following section shall be inserted, namely:—

"11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any company under which,—

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement.

(3) Notwithstanding anything contained in sub-section (2), any scheme or arrangement—

(i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State; 2 of 1912.

(ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934; 2 of 1934.

(iii) being a contract of insurance to which the Insurance Act, 1938, applies; 4 of 1938.

(iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952; 19 of 1952.

(v) under which deposits are accepted under section 58A of the Companies Act, 1956; 1 of 1956.

(vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956; 1 of 1956.

(vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982; 40 of 1982.

(viii) under which contributions made are in the nature of subscription to a mutual fund;

shall not be a collective investment scheme."

Collective
investment
scheme.

STATEMENT OF OBJECTS AND REASONS

In the last few years there have been substantial improvements in the functioning of capital markets in India. Market and credit risks have been reduced by requirement of adequate capitalisation, margining and establishment of clearing corporations in stock exchanges, etc. Systemic improvements have been made by introduction of screen based trading and depositories to allow book entry transfer of securities, etc. However, there are inadequate advanced risk management tools. With a view to provide such tools and to strengthen and deepen markets, there is an urgent need to include derivatives as securities in the Securities Contracts (Regulation) Act, 1956 whereby trading in derivatives may be possible within the framework of that Act.

2. Recently many companies especially plantation companies have been raising capital from investors through schemes which are in the form of collective investment schemes. However, there is not an adequate regulatory framework to allow an orderly development of this market. In order that the interests of investors are protected, it has been decided that the Securities and Exchange Board of India would frame regulations with regard to collective investment schemes. It is, therefore, proposed to amend the definition of "securities" so as to include within its ambit the derivatives and the units or any other instrument issued by any collective investment scheme to the investors in such schemes.

3. It is also proposed to substitute section 29A of the aforesaid Act relating to delegation of powers. At present powers can be delegated to the Securities and Exchange Board of India. It is now proposed to also delegate powers to the Reserve Bank of India.

4. The Securities Contracts (Regulation) Amendment Bill, 1998 was introduced in Lok Sabha on the 4th July, 1998 proposing amendments in the Securities Contracts (Regulation) Act, 1956 to give effect to the amendments mentioned above. The Bill was referred to the Standing Committee on Finance on the 10th July, 1998 for examination and report thereon by the Hon'ble Speaker, Lok Sabha. The Committee submitted its report on the 17th March, 1999. The Committee was of the opinion that the introduction of derivatives, if implemented with proper safeguards and risk containment measures, will certainly give a fillip to the sagging market, result in enhanced investment activity and instil greater confidence among the investors/participants. The Committee after having examined the provisions of the Bill and being convinced of the needs and objectives of the Bill, approved the same for enactment by Parliament with certain modifications/recommendations which, *inter alia*, are stated as under:—

(i) A view was expressed before the Standing Committee that since under section 30 of the Indian Contract Act, 1872, the contracts which are cash settled are classified as wagers and trading in wagers is null and void, the index future which are always cash settled would also be classified as wagers under the said Act. Due to this, no proceedings to enforce an index future contracts either by an exchange against a defaulting broker or client against his broker would stand the legal scrutiny before the court of law. The Committee was, therefore, of the view that there was no harm in having an overriding provision as a matter of abundant caution. They, therefore, suggested the incorporation of the following provision in the Bill, namely:—

"Notwithstanding anything contained in any other Act, contracts in derivatives as per this Act shall be legal and valid.";

(ii) The Committee was convinced that stock exchanges which are presently working would be better equipped to undertake trading in derivatives in a sophisticated environment. They further observed that most of these exchanges have

already been modernised having state-of-the-art technology, the facility of depository and clearance house and moreover, since they are in a better position to handle the risk profiles of the retail investors, institutional investors and corporate bodies, it would be prudent to allow trading in derivatives by such exchanges only. The Committee had, therefore, proposed that the following *Explanation* may be added in the Bill, namely:—

"The derivatives shall be traded and settled on the stock exchange and clearing house of the stock exchange respectively in accordance with the rules and bye-laws of the stock exchange."; and

(iii) The Committee was of the opinion that there was a need to define collective investment schemes in the Act. They had recommended that a definition of collective investment scheme suitably worded in consonance with the definition recommended by the Dave Committee should be included in the Act.

The Central Government have accepted the above recommendations and incorporated the same in the Bill.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 22nd October, 1999.

YASHWANT SINHA.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill seeks to empower the Central Government to make rules, by notification in the Official Gazette, to provide for the requirements which shall be complied with by collective investment scheme for the purpose of getting their units listed on any stock exchange.

2. The matter in respect of which the aforesaid rules may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself.

3. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 68 OF 1999

A Bill further to amend the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title.

1. This Act may be called the Securities Laws (Second Amendment) Act, 1999.

CHAPTER II

AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

Amendment of
section 2.

2. In section 2 of the Securities Contracts (Regulation) Act, 1956 (hereafter in this Chapter referred to as the principal Act), after clause (g), the following clause shall be inserted, namely:—

42 of 1956.

‘(ga) “Securities Appellate Tribunal” means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992.’

15 of 1992.

3. After section 2 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 2A.

1 of 1956.
15 of 1992.
22 of 1996.

"2A. Words and expressions used herein and not defined in this Act but defined in the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the same meanings respectively assigned to them in those Acts."

Interpretation of certain words and expressions.

4. In section 22 of the principal Act, the following proviso shall be inserted, namely:—

Amendment of section 22.

"Provided that no appeal shall be preferred against refusal, omission or failure, as the case may be, under this section on and after the commencement of the Securities Laws (Second Amendment) Act, 1999."

5. After section 22 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 22A, 22B, 22C, 22D, 22E and 22F.

'22A. (1) Where a recognised stock exchange, acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any company, the company shall be entitled to be furnished with reasons for such refusal, and may,—

Right of appeal to Securities Appellate Tribunal against refusal of stock exchange to list securities of public companies.

(a) within fifteen days from the date on which the reasons for such refusal are furnished to it; or

1 of 1956.

(b) where the stock exchange has omitted or failed to dispose of, within the time specified in sub-section (1A) of section 73 of the Companies Act, 1956 (hereafter in this section referred to as the "specified time"), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Securities Appellate Tribunal may, on sufficient cause being shown, allow,

appeal to the Securities Appellate Tribunal having jurisdiction in the matter against such refusal, omission or failure, as the case may be, and thereupon the Securities Appellate Tribunal may, after giving the stock exchange, an opportunity of being heard,—

(i) vary or set aside the decision of the stock exchange; or

(ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,

and where the Securities Appellate Tribunal sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Securities Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be in such form and be accompanied by such fee as may be prescribed.

(3) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board and parties to the appeal.

(4) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

5 of 1908.

22B. (1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

Procedure and powers of Securities Appellate Tribunal.

(2) The Securities Appellate Tribunal shall have, for the purpose of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— 5 of 1908.

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it *ex parte*;
- (g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*; and
- (h) any other matter which may be prescribed.

(3) Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. 45 of 1860.
2 of 1974.

Right to legal representation.

22C. The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Explanation.—For the purposes of this section,—

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; 38 of 1949.

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; 56 of 1980.

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; 23 of 1959.

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

Limitation.

22D. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal. 36 of 1963.

Civil court not to have jurisdiction.

22E. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to High Court.

22F. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High Court within sixty days from the date of

communication of the decision or order of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.'

6. In section 23 of the principal Act, in sub-section (2), after the word and figures "section 22", the words "or with the orders of the Securities Appellate Tribunal" shall be inserted.

Amendment of section 23.

7. In section 30 of the principal Act, in sub-section (2), for clause (ha), the following clause shall be substituted, namely:—

Amendment of section 30.

"(ha) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 22A and the fees payable in respect of such appeal;"

CHAPTER III

AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

15 of 1992.

8. In section 15K of the Securities and Exchange Board of India Act, 1992 (hereafter in this Chapter referred to as the principal Act), in sub-section (1), after the words "under this Act", the words "or any other law for the time being in force" shall be inserted.

Amendment of section 15K.

9. In section 15T of the principal Act,—

Amendment of section 15T.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Save as provided in sub-section (2), any person aggrieved,—

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order made by an adjudicating officer under this Act, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.";

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) No appeal shall lie to the Securities Appellate Tribunal from an order made—

(a) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999;

(b) by an adjudicating officer,

with the consent of the parties.";

(c) in sub-section (3), for the words "a copy of the order made by the adjudicating officer", the words "a copy of the order made by the Board or the adjudicating officer, as the case may be," shall be substituted;

(d) in sub-section (5), for the word "parties", the words "Board, the parties" shall be substituted.

10. For section 15V of the principal Act, the following shall be substituted, namely:—

Substitution of new section for section 15V.

'15V. The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Right to legal representation.

Explanation.—For the purposes of this section,—

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; 38 of 1949.

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; 56 of 1980.

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; 23 of 1959.

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.'

Amendment of section 20.

11. In section 20 of the principal Act, in sub-section (1), for the words "an order of the Board made", the words, brackets and figures "an order of the Board made, before the commencement of the Securities Laws (Second Amendment) Act, 1999," shall be substituted.

Amendment of section 20A.

12. In section 20A of the principal Act,—

(a) for the word "Board" wherever it occurs, the words "Board or the adjudicating officer" shall be substituted;

(b) for the word and figures "section 20", the words, figures and letter "section 15T or section 20" shall be substituted.

CHAPTER IV

AMENDMENTS TO THE DEPOSITORIES ACT, 1996

Amendment of section 2.

13. In section 2 of the Depositories Act, 1996 (hereafter in this Chapter referred to as the principal Act), after clause (k), the following clause shall be inserted, namely:— 22 of 1996.

'(ka) "Securities Appellate Tribunal" means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992;'. 15 of 1992.

Amendment of section 23.

14. In section 23 of the principal Act, in sub-section (1), for the words "an order of the Board made", the words, brackets and figures "an order of the Board made before the commencement of the Securities Laws (Second Amendment) Act, 1999" shall be substituted.

Insertion of new sections 23A, 23B, 23C, 23D, 23E and 23F.

15. After section 23 of the principal Act, the following sections shall be inserted, namely:—

Appeal to Securities Appellate Tribunal.

'23A. (1) Save as provided in sub-section (2), any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the regulations made thereunder, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made by the Board with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board is received by the person referred to in sub-section (1) and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board and parties to the appeal.

(6) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

5 of 1908. 23B. (1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

Procedure and powers of Securities Appellate Tribunal.

5 of 1908. (2) The Securities Appellate Tribunal shall have, for the purpose of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*; and

(h) any other matter which may be prescribed.

45 of 1860. (3) Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2 of 1974.

23C. The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Right to legal representation.

Explanation.—For the purposes of this section,—

38 of 1949. (a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1980. (b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; 23 of 1959.

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

Limitation. 23D. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal. 36 of 1963.

Civil court not to have jurisdiction. 23E. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to High Court. 23F. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Amendment of section 24. 16. In section 24 of the principal Act, in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

"(d) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 23A and the fees payable in respect of such appeal."

STATEMENT OF OBJECTS AND REASONS

The Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996 govern the operations of the capital market. The objectives of these Acts are to prevent undesirable transactions in securities by regulating the business of dealing therein, to provide for the establishment of the Securities and Exchange Board of India to protect the interests of investors in securities and to promote the development of, and to regulate, the securities markets and to provide for regulation of depositories in securities and for matters connected therewith or incidental thereto.

2. The Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 were amended by the Securities Laws (Amendment) Act, 1995, which, *inter alia*, made provisions in the Securities and Exchange Board of India Act, 1992 for appointment of adjudicating officer for imposition of penalties and for establishment of the Securities Appellate Tribunal to hear appeals against the orders or decisions of such adjudicating officers.

3. The Central Government has been conferred powers to hear appeals in respect of all matters (except hearing of appeals against the orders of adjudicating officer under the Securities and Exchange Board of India Act, 1992) under the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996. In addition to appellate powers, the Central Government, *inter alia*, has been conferred powers to issue directions and to make rules under these Acts. The Central Government is also represented on the management of the Securities and Exchange Board of India as well as stock exchanges.

4. The powers of the Central Government to issue directions and to make rules and to appoint members of the Securities and Exchange Board of India as well as on governing body of the stock exchanges are being perceived as compromising its appellate powers. It is, therefore, proposed to transfer the aforesaid appellate functions of the Central Government under all three Acts from the Central Government to the Securities Appellate Tribunal.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 22nd October, 1999.

YASHWANT SINHA.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill seeks to amend section 30 of the Securities Contracts (Regulation) Act, 1956 to empower the Central Government to make rules to provide for the form in which an appeal may be filed before the Securities Appellate Tribunal under section 22A and the fees payable in respect of such appeals.

2. Clause 16 seeks to amend section 24 of the Depositories Act, 1996 to empower the Central Government to make rules to provide for the form in which an appeal may be filed before the Securities Appellate Tribunal under section 23A and the fees payable in respect of such appeals.

3. The matters in respect of which rules may be made are matters of procedure and detail and it is not practicable to provide for them in the Bill itself.

4. The delegation of legislative power is, therefore, of a normal character.

BILL No. 66 OF 1999

A Bill to provide for the establishment of an Authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto and further to amend the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the General Insurance Business (Nationalisation) Act, 1972.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Insurance Regulatory and Development Authority Act, 1999.

(2) It extends to the whole of India.

Short title,
extent and
commencement.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "appointed day" means the date on which the Authority is established under sub-section (1) of section 3;

(b) "Authority" means the Insurance Regulatory and Development Authority established under sub-section (1) of section 3;

(c) "Chairperson" means the Chairperson of the Authority;

(d) "Fund" means the Insurance Regulatory and Development Authority Fund constituted under sub-section (1) of section 16;

(e) "Interim Insurance Regulatory Authority" means the Insurance Regulatory Authority set up by the Central Government through Resolution No. 17(2)/94-Ins.-V, dated the 23rd January, 1996;

(f) "intermediary or insurance intermediary" includes insurance brokers, re-insurance brokers, insurance consultants, surveyors and loss assessors;

(g) "member" means a whole-time or a part-time member of the Authority and includes the Chairperson;

(h) "notification" means a notification published in the Official Gazette;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "regulations" means the regulations made by the Authority.

(2) Words and expressions used and not defined in this Act but defined in the Insurance Act, 1938 or the Life Insurance Corporation Act, 1956 or the General Insurance Business (Nationalisation) Act, 1972 shall have the meanings respectively assigned to them in those Acts.

4 of 1938.
31 of 1956.
57 of 1972.

CHAPTER II

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

Establishment and incorporation of Authority.

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, an Authority to be called "the Insurance Regulatory and Development Authority".

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the Authority shall be at such place as the Central Government may decide from time to time.

(4) The Authority may establish offices at other places in India.

4. The Authority shall consist of the following members, namely:—Composition
of Authority.

- (a) a Chairperson;
- (b) not more than five whole-time members;
- (c) not more than four part-time members,

to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the Authority:

Provided that the Central Government shall, while appointing the Chairperson and the whole-time members, ensure that at least one person each is a person having knowledge or experience in life insurance, general insurance or actuarial science, respectively.

5. (1) The Chairperson and every other whole-time member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Tenure of
office of
Chairperson
and other
members.

Provided that no person shall hold office as a Chairperson after he has attained the age of sixty-five years:

Provided further that no person shall hold office as a whole-time member after he has attained the age of sixty-two years.

(2) A part-time member shall hold office for a term not exceeding five years from the date on which he enters upon his office.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), a member may—

(a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 6.

6. (1) The Central Government may remove from office any member who—

Removal from
office.

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has become physically or mentally incapable of acting as a member; or

(c) has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position as to render his continuation in office detrimental to the public interest.

(2) No such member shall be removed under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

7. (1) The salary and allowances payable to, and other terms and conditions of service of, the members other than part-time members shall be such as may be prescribed.

Salary and
allowances of
Chairperson
and members.

(2) The part-time members shall receive such allowances as may be prescribed.

(3) The salary, allowances and other conditions of service of a member shall not be varied to his disadvantage after appointment.

Bar on future
employment of
members.

8. The Chairperson and the whole-time members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept—

(a) any employment either under the Central Government or under any State Government; or

(b) any appointment in any company in the insurance sector.

Administrative
powers of
Chairperson.

9. The Chairperson shall have the powers of general superintendence and direction in respect of all administrative matters of the Authority.

Meetings of
Authority.

10. (1) The Authority shall meet at such times and places and shall observe such rules and procedures in regard to transaction of business at its meetings (including quorum at such meetings) as may be determined by the regulations.

(2) The Chairperson, or if for any reason he is unable to attend a meeting of the Authority, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the person presiding shall have a second or casting vote.

(4) The Authority may make regulations for the transaction of business at its meetings.

Vacancies, etc.,
not to
invalidate
proceedings of
Authority.

11. No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Officers and
employees of
Authority.

12. (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The terms and other conditions of service of officers and other employees of the Authority appointed under sub-section (1) shall be governed by regulations made under this Act.

CHAPTER III

TRANSFER OF ASSETS, LIABILITIES, ETC., OF INTERIM INSURANCE REGULATORY AUTHORITY

Transfer of
assets,
liabilities, etc.,
of Interim
Insurance
Regulatory
Authority.

13. On the appointed day,—

(a) all the assets and liabilities of the Interim Insurance Regulatory Authority shall stand transferred to, and vested in, the Authority.

Explanation.—The assets of the Interim Insurance Regulatory Authority shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of the Interim Insurance Regulatory Authority and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(b) without prejudice to the provisions of clause (a), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Interim Insurance Regulatory Authority immediately before that day, for or in connection with the purpose of the said Regulatory Authority, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Authority;

(c) all sums of money due to the Interim Insurance Regulatory Authority immediately before that day shall be deemed to be due to the Authority; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against the Interim Insurance Regulatory Authority immediately before that day may be continued or may be instituted by or against the Authority.

CHAPTER IV

DUTIES, POWERS AND FUNCTIONS OF AUTHORITY

14. (1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business.

Duties, powers
and functions
of Authority.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include,—

(a) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;

(b) protection of the interests of the policy-holders in matters concerning assigning of policy, nomination by policy-holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance;

(c) specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;

(d) specifying the code of conduct for surveyors and loss assessors;

(e) promoting efficiency in the conduct of insurance business;

(f) promoting and regulating professional organisations connected with the insurance and re-insurance business;

(g) levying fees and other charges for carrying out the purposes of this Act;

(h) calling for information from, undertaking inspection of, conducting enquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organisations connected with the insurance business;

(i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938;

(j) specifying the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;

(k) regulating investment of funds by insurance companies;

(l) regulating maintenance of margin of solvency;

(m) adjudication of disputes between insurers and intermediaries or insurance intermediaries;

(n) supervising the functioning of the Tariff Advisory Committee;

(o) specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organisations referred to in clause (f);

(p) specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and

(q) exercising such other powers as may be prescribed.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

Grants by
Central
Government.

15. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as the Government may think fit for being utilised for the purposes of this Act.

Constitution of
Fund.

16. (1) There shall be constituted a fund to be called "the Insurance Regulatory and Development Authority Fund" and there shall be credited thereto—

(a) all Government grants, fees and charges received by the Authority;

(b) all sums received by the Authority from such other source as may be decided upon by the Central Government;

(c) the percentage of prescribed premium income received from the insurer.

(2) The Fund shall be applied for meeting—

(a) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;

(b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

Accounts and
audit.

17. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books of account, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

CHAPTER VI

MISCELLANEOUS

18. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Power of
Central
Government to
issue directions.

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

19. (1) If at any time the Central Government is of the opinion—

Power of
Central
Government to
supersede
Authority.

(a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person to be the Controller of Insurance under section 2B of the Insurance Act, 1938, if not already done:

4 of 1938.

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,—

(a) the Chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the Controller of Insurance; and

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for reappointment.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Furnishing of returns, etc., to Central Government.

20. (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed, or as the Central Government may direct to furnish such returns, statements and other particulars in regard to any proposed or existing programme for the promotion and development of the insurance industry as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Authority shall, within nine months after the close of each financial year, submit to the Central Government a report giving a true and full account of its activities including the activities for promotion and development of the insurance business during the previous financial year.

(3) Copies of the reports received under sub-section (2) shall be laid, as soon as may be after they are received, before each House of Parliament.

Chairperson, members, officers and other employees of Authority to be public servants.
Protection of action taken in good faith.

21. The Chairperson, members, officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

22. No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or any member, officer or other employee of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder:

Provided that nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.

Delegation of powers.

23. (1) The Authority may, by general or special order in writing, delegate to the Chairperson or any other member or officer of the Authority subject to such conditions, if any, as may be specified in the order such of its powers and functions under this Act as it may deem necessary.

(2) The Authority may, by a general or special order in writing, also form committees of the members and delegate to them the powers and functions of the Authority as may be specified by the regulations.

Power to make rules.

24. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to, and other terms and conditions of service of, the members other than part-time members under sub-section (1) of section 7;

(b) the allowances to be paid to the part-time members under sub-section (2) of section 7;

(c) such other powers that may be exercised by the Authority under clause (g) of sub-section (2) of section 14;

(d) the form of annual statement of accounts to be maintained by the Authority under sub-section (1) of section 17;

(e) the form and the manner in which and the time within which returns and statements and particulars are to be furnished to the Central Government under sub-section (1) of section 20;

(f) the matters under sub-section (5) of section 25 on which the Insurance Advisory Committee shall advise the Authority;

(g) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be or may be made by rules.

25. (1) The Authority may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the Insurance Advisory Committee.

Establishment
of Insurance
Advisory
Committee.

(2) The Insurance Advisory Committee shall consist of not more than twenty-five members excluding *ex officio* members to represent the interests of commerce, industry, transport, agriculture, consumer fora, surveyors, agents, intermediaries, organisations engaged in safety and loss prevention, research bodies and employees' association in the insurance sector.

(3) The Chairperson and the members of the Authority shall be the *ex officio* Chairperson and *ex officio* members of the Insurance Advisory Committee.

(4) The objects of the Insurance Advisory Committee shall be to advise the Authority on matters relating to the making of the regulations under section 26.

(5) Without prejudice to the provisions of sub-section (4), the Insurance Advisory Committee may advise the Authority on such other matters as may be prescribed.

26. (1) The Authority may, in consultation with the Insurance Advisory Committee, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

Power to make
regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings including the quorum necessary for the transaction of business under sub-section (1) of section 10;

(b) the transactions of business at its meetings under sub-section (4) of section 10;

(c) the terms and other conditions of service of officers and other employees of the Authority under sub-section (2) of section 12;

(d) the powers and functions which may be delegated to Committees of the members under sub-section (2) of section 23; and

(e) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be or may be made by regulations.

27. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Rules and
regulations to
be laid before
Parliament.

28. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

29. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Application of
other laws not
barred.
Power to
remove
difficulties.

Provided that no order shall be made under this section after the expiry of two years from the appointed day.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

Amendment of
Act 4 of 1938.

30. The Insurance Act, 1938 shall be amended in the manner specified in the First Schedule to this Act.

Amendment of
Act 31 of 1956.

31. The Life Insurance Corporation Act, 1956 shall be amended in the manner specified in the Second Schedule to this Act.

Amendment of
Act 57 of 1972.

32. The General Insurance Business (Nationalisation) Act, 1972 shall be amended in the manner specified in the Third Schedule to this Act.

THE FIRST SCHEDULE

(See section 30)

AMENDMENTS TO THE INSURANCE ACT, 1938

(4 OF 1938)

1. In the Act, except in clause (5B) of section 2 and section 2B, for "Controller" wherever it occurs, substitute "Authority" and such consequential changes as the rules of grammar may require shall also be made.

2. In sections 27, 27A, 27B, 31, 32A, 40A, 48B, 64F, 64G, 64-I, 64J, 64L, 64R, 64UC, 64UM, 113 and 115, for "Central Government" wherever they occur, substitute "Authority".

3. Section 2,—

(a) after clause (I), insert the following:—

'(IA) "Authority" means the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999;'

(b) for clause (5B), substitute the following:—

'(5B) "Controller of Insurance" means the officer appointed by the Central Government under section 2B to exercise all the powers, discharge the functions and perform the duties of the Authority under this Act or the Life Insurance Corporation Act, 1956 or the General Insurance Business (Nationalisation) Act, 1972 or the Insurance Regulatory and Development Authority Act, 1999;'

(c) after clause (7), insert the following:—

'(7A) "Indian insurance company" means any insurer being a company—

(a) which is formed and registered under the Companies Act, 1956;

(b) in which the aggregate holdings of equity shares by a foreign company, either by itself or through its subsidiary companies or its nominees, do not exceed twenty-six per cent. paid-up equity capital of such Indian insurance company;

(c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business.

Explanation.—For the purposes of this clause, the expression "foreign company" shall have the meaning assigned to it under clause (23A) of section 2 of the Income-tax Act, 1961;'

(d) in clause (14), for "section 114", substitute "this Act".

4. After section 2, insert the following:—

"2A. Words and expressions used and not defined in this Act but defined in the Life Insurance Corporation Act, 1956, the General Insurance Business (Nationalisation) Act, 1972 and the Insurance Regulatory and Development Authority Act, 1999 shall have the meanings respectively assigned to them in those Acts."

5. Section 2B, for sub-section (1), substitute the following:—

"(1) If at any time, the Authority is superseded under sub-section (1) of section 19 of the Insurance Regulatory and Development Authority Act, 1999, the Central Government may, by notification in the Official Gazette, appoint a person to be the Controller of Insurance till such time the Authority is reconstituted under sub-section (3) of section 19 of that Act."

Interpretation
of certain
words and
expressions.

31 of 1956.
57 of 1972.

1 of 1956.

43 of 1961.

31 of 1956.
57 of 1972.

6. Section 2C, in sub-section (1), after the second proviso, insert the following:—

“Provided also that no insurer other than an Indian insurance company shall begin to carry on any class of insurance business in India under this Act on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.”.

7. Section 3,—

(a) in sub-section (1), after the first proviso, insert the following:—

“Provided further that a person or insurer, as the case may be, carrying on any class of insurance business in India, on or before the commencement of the Insurance Regulatory and Development Authority Act, 1999, for which no registration certificate was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he had made an application for such registration within the said period of three months, till the disposal of such application:

Provided also that any certificate of registration, obtained immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be deemed to have been obtained from the Authority in accordance with the provisions of this Act.”;

(b) in sub-section (2),—

(i) in the opening portion, for “Every application for registration shall be accompanied by—”, substitute the following:—

“Every application for registration shall be made in such manner as may be determined by the regulations made by the Authority and shall be accompanied by—”;

(ii) in clause (d), for “working capital”, substitute “paid-up equity capital or working capital”;

(iii) in clause (f), in the proviso, omit “and” occurring at the end;

(iv) for clause (g), substitute the following:—

“(g) the receipt showing payment of fee as may be determined by the regulations which shall not exceed fifty thousand rupees for each class of business as may be specified by the regulations made by the Authority;

(h) such other documents as may be specified by the regulations made by the Authority.;

(c) in sub-section (4),—

(i) in clause (f), for “of any rule or order made thereunder, or”, substitute the following:—

“of any rule or any regulation or order made or, any direction issued thereunder, or”;

(ii) in clause (h), insert “or” at the end;

(iii) after clause (h), insert the following:—

“(i) if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority Act, 1999, or

(j) if the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 1956 or the Life Insurance Corporation Act, 1956 or the General Insurance Business (Nationalisation) Act, 1972 or the Foreign Exchange Regulation Act, 1973.”;

1 of 1956.
31 of 1956.
57 of 1972.
46 of 1973.

(d) in sub-section (5C),—

(i) for “clause (h)”, substitute “clause (h) or clause (i) or clause (j)”;

(ii) for “any requirement of this Act or of any rule or order made thereunder”, substitute the following:—

“any requirement of this Act or the Insurance Regulatory and Development Authority Act, 1999 or of any rule or any regulation, or any order made thereunder or any direction issued under those Acts”;

(e) after sub-section (5D), insert the following:—

“(5E) The Authority may, by order, suspend or cancel any registration in such manner as may be determined by the regulations made by it:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.”;

(f) for sub-section (7), substitute the following:—

“(7) The Authority may, on payment of such fee, not exceeding five thousand rupees, as may be determined by the regulations, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where the Authority is of opinion that the issue of duplicate certificate is necessary.”.

8. Section 3A,—

(a) in sub-section (1), for “the 31st day of December, 1941.”, substitute the following:—

“the 31st day of March, after the commencement of the Insurance Regulatory and Development Authority Act, 1999.”;

(b) in sub-section (2),—

(i) for “prescribed fee”, substitute “fee as determined by the regulations made by the Authority”;

(ii) for clause (i), substitute the following:—

“(i) exceed one-fourth of one per cent. of such premium income or rupees five crores, whichever is less,”;

(iii) for clause (ii), substitute the following:—

“(ii) be less, in any case, than fifty thousand rupees for each class of insurance business.”;

(c) in sub-section (3), for “prescribed fee”, substitute “fee as determined by the regulations made by the Authority”;

(d) in sub-section (4), for “prescribed fee”, substitute “fee as determined by the regulations made by the Authority, and”.

9. For section 6, substitute the following:—

“6. No insurer carrying on the business of life insurance, general insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has,—

Requirement as to capital.

(i) a paid-up equity capital of rupees one hundred crores, in case of a person carrying on the business of life insurance or general insurance; or

(ii) a paid-up equity capital of rupees two hundred crores, in case of a person carrying on exclusively the business as a reinsurer:

Provided that in determining the paid-up equity capital specified under clause (i) or clause (ii), the deposit to be made under section 7 and any preliminary expenses incurred in the formation and registration of the company shall be excluded:

Provided further that an insurer carrying on business of life insurance, general insurance or re-insurance in India before the commencement of the Insurance Regulatory and Development Authority Act, 1999 and who is required to be registered under this Act, shall have a paid-up equity capital in accordance with clause (i) and clause (ii), as the case may be, within six months of the commencement of that Act.”.

10. Section 6A,—

(a) in sub-section (4), in clause (b),—

(I) in sub-clause (i), omit “and” occurring at the end;

(II) in sub-clause (ii), for “sanction of the Central Government has been obtained to the transfer.”, substitute “approval of the Authority has been obtained to the transfer.”;

(III) after sub-clause (ii), insert the following:—

“(iii) where, the nominal value of the shares intended to be transferred by any individual, firm, group, constituents of a group, or body corporate under the same management, jointly or severally exceeds one per cent of the paid-up equity capital of the insurer, unless the previous approval of the Authority has been obtained for the transfer.

Explanation.—For the purposes of this sub-clause, the expressions “group” and “same management” shall have the same meanings respectively assigned to them in the Monopolies and Restrictive Trade Practices Act, 1969.”;

54 of 1969.

(b) in sub-section (11),—

(i) for “*Explanation 1.*”, substitute “*Explanation*”;

(ii) omit *Explanation 2.*

11. After section 6A, insert the following:—

“6AA. (1) No promoter shall at any time hold more than twenty-six per cent. or such other percentage as may be prescribed, of the paid-up equity capital in an Indian insurance company:

Provided that in a case where an Indian insurance company begins the business of life insurance, general insurance or re-insurance in which the promoters hold more than twenty-six per cent. of the paid-up equity capital or such other excess percentage as may be prescribed, the promoters shall divest in a phased manner the share capital in excess of the twenty-six per cent. of the paid-up equity capital or such excess paid-up equity capital as may be prescribed, after a period of ten years from the date of the commencement of the said business by such Indian insurance company or within such period as may be prescribed by the Central Government.

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the proviso shall apply to the promoters being foreign company, referred to in sub-clause (b) of clause (7A) of section 2.

(2) The manner and procedure for divesting the excess share capital under sub-section (1) shall be specified by the regulations made by the Authority.”.

Manner of
divesting
excess
shareholding
by promoter in
certain cases.

12. Section 7,—

(a) in sub-section (I),—

(i) omit “not being an insurer specified in sub-clause (c) of clause (9) of section 2”;

(ii) for clauses (a) and (b), substitute the following:—

“(a) in the case of life insurance business, a sum equivalent to one per cent. of his total gross premium written in India in any financial year commencing after the 31st day of March, 2000, not exceeding rupees ten crores;

(b) in the case of general insurance business, a sum equivalent to three per cent. of his total gross premium written in India, in any financial year commencing after the 31st day of March, 2000, not exceeding rupees ten crores;

(c) in the case of re-insurance business, a sum of rupees twenty crores;”;

(b) omit sub-sections (IA), (IB), (IC), (ID) and (IE).

13. Section 11,—

(a) in sub-section (I), for “calendar year”, substitute “financial year”;

(b) after sub-section (I), insert the following:—

“(IA) Notwithstanding anything contained in sub-section (I), every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, in respect of insurance business transacted by him and in respect of his shareholders’ funds, shall, at the expiration of each financial year, prepare with reference to that year, a balance-sheet, a profit and loss account, a separate account of receipts and payments, a revenue account in accordance with the regulations made by the Authority.

(IB) Every insurer shall keep separate accounts relating to funds of shareholders and policy-holders.”.

14. Section 13,—

(a) in sub-section (I),—

(i) for “once at least in every three years”, substitute “every year”;

(ii) in the first proviso, for “not later than four years”, substitute “not later than two years”;

(iii) after the second proviso, insert the following:—

“Provided also that for an insurer carrying on life insurance business in India immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, the last date as at which the first investigation after such commencement should be caused by an actuary, shall be the 31st day of March, 2001.”;

(iv) after the third proviso, insert the following:—

“Provided also that every insurer on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall cause an abstract of the report of the actuary to be made in the manner specified by the regulations made by the Authority.”;

(b) in sub-section (4), after the proviso, insert the following:—

“Provided further that the statement referred to in sub-section (4) shall be appended in the form and in the manner specified by the regulations made by the Authority.”.

15. After section 27B, insert the following:—

“27C. No insurer shall directly or indirectly invest outside India the funds of the policy-holders.

27D. (1) Without prejudice to anything contained in sections 27, 27A and 27B, the Authority may, in the interests of the policy-holders, specify by the regulations made by it, the time, manner and other conditions of investment of assets to be held by an insurer for the purposes of this Act.

(2) The Authority may, after taking into account the nature of business and to protect the interests of the policy-holders, issue to an insurer the directions relating to the time, manner and other conditions of investment of assets to be held by him:

Provided that no direction under this sub-section shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard.”.

16. Section 28A, in sub-section (1), for “31st day of December”, substitute “31st day of March”.

17. Section 28B, in sub-section (1), for “31st day of December”, substitute “31st day of March”.

18. Section 31B,—

(a) in sub-section (1), for “Central Government” at both the places where they occur, substitute “Authority”;

(b) in sub-section (2), for “a statement in the prescribed form”, substitute “a statement, in the form specified by the regulations made by the Authority,”;

(c) after sub-section (3), insert the following:—

“(4) Every direction under this section shall be issued by an order made by the Authority:

Provided that no order under this section shall be made unless the person concerned has been given an opportunity of being heard.”.

19. After section 32A, insert the following:—

“32B. Every insurer shall, after the commencement of the Insurance Regulatory and Development Authority Act, 1999, undertake such percentages of life insurance business and general insurance business in the rural or social sector, as may be specified, in the Official Gazette by the Authority, in this behalf.”.

20. For section 33, substitute the following:—

‘INVESTIGATION

33. (1) The Authority may, at any time, by order in writing, direct any person (hereafter in this section referred to as “Investigating Authority”) specified in the order to investigate the affairs of any insurer and to report to the Authority on any investigation made by such Investigating Authority:

Provided that the Investigating Authority may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section.

(2) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956, the Investigating Authority may, at any time, and shall, on being directed so to do by the Authority, cause an inspection to be made by one or more of his officers of any

Prohibition for investment of funds outside India.
Manner and conditions of investment.

Insurance business in rural or social sector.

Power of investigation and inspection by Authority.

insurer and his books and account; and the Investigating Authority shall supply to the insurer a copy of his report on such inspection.

(3) It shall be the duty of every manager, managing director or other officer of the insurer to produce before the Investigating Authority directed to make the investigation under sub-section (1), or inspection under sub-section (2), all such books of account, registers and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the insurer as the said Investigating Authority may require of him within such time as the said Investigating Authority may specify.

(4) Any Investigating Authority, directed to make an investigation under sub-section (1), or inspection under sub-section (2), may examine on oath, any manager, managing director or other officer of the insurer in relation to his business and may administer oaths accordingly.

(5) The Investigating Authority shall, if he has been directed by the Authority to cause an inspection to be made, and may, in any other case, report to the Authority on any inspection made under this section.

(6) On receipt of any report under sub-section (1) or sub-section (5), the Authority may, after giving such opportunity to the insurer to make a representation in connection with the report as, in the opinion of the Authority, seems reasonable, by order in writing,—

(a) require the insurer, to take such action in respect of any matter arising out of the report as the Authority may think fit; or

(b) cancel the registration of the insurer; or

(c) direct any person to apply to the court for the winding up of the insurer, if a company, whether the registration of the insurer has been cancelled under clause (b) or not.

(7) The Authority may, after giving reasonable notice to the insurer, publish the report submitted by the Investigating Authority under sub-section (5) or such portion thereof as may appear to it to be necessary.

(8) The Authority may by the regulations made by it specify the minimum information to be maintained by insurers in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Authority to discharge satisfactorily his functions under this section.

Explanation.—For the purposes of this section, the expression “insurer” shall include in the case of an insurer incorporated in India—

(a) all its subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; and

(b) all its branches whether situated in India or outside India.

(9) No order made under this section other than an order made under clause (b) of sub-section (6) shall be capable of being called in question in any court.

(10) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer, shall have priority over that debts due from the insurer and shall be recoverable as an arrear of land revenue.’

21. Section 33A, omit “Central Government or the”.

22. Section 34H,—

(a) in sub-section (1),—

(i) for “Controller”, substitute “Chairperson of the Authority”;

(ii) for “an Assistant Controller of Insurance”, substitute “an officer authorised by the Authority”;

(b) in sub-sections (5) and (7), for “Controller” wherever it occurs, substitute “Chairperson of the Authority”.

23. Section 35,—

(a) in sub-section (1), for “sanctioned by the Controller”, substitute “approved by the Authority”;

(b) in sub-section (3),—

(i) in the first paragraph, for “to sanction any such scheme”, substitute “to approve any such scheme”;

(ii) in the second paragraph, for “the amalgamation or transfer if sanctioned”, substitute “the amalgamation or transfer if approved”.

24. Section 36,—

(a) in sub-section (1), for “may sanction the arrangement”, substitute “may approve the arrangement”;

(b) in sub-section (2),—

(i) for “the insurers concerned in the amalgamation, the Controller may sanction”, substitute “the insurers concerned in the amalgamation, the Authority may approve”;

(ii) for “contracts as sanctioned by the Controller”, substitute “contracts as approved by the Authority”.

25. Section 37, in clause (c), for “scheme sanctioned”, substitute “scheme approved”.

26. In section 40A, in sub-section (3), for the portion beginning with the words “an amount exceeding” and ending with the words “ten per cent of the premium payable on the policy”, substitute “an amount not exceeding fifteen per cent of the premium payable on the policy where the policy relates to fire or marine insurance or miscellaneous insurance.”.

27. Section 42,—

(a) for sub-section (1), substitute the following:—

“(1) The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by it and on payment of the fee determined by the regulations, which shall not be more than two hundred and fifty rupees, issue to any person making an application in the manner determined by the regulations, a licence to act as an insurance agent for the purpose of soliciting or procuring insurance business:

Provided that,—

(i) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4); and

(ii) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications:

Provided further that any licence issued immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999 shall be deemed to have been issued in accordance with the regulations which provide for such licence.”;

(b) for sub-section (3), substitute the following:—

“(3) A licence issued under this section, after the date of the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall

remain in force for a period of three years only from the date of issue, but shall, if the applicant, being an individual does not, or being a company or firm any of its directors or partners does not, suffer from any of the disqualifications mentioned in clauses (b), (c), (d), (e) and (f) of sub-section (4) and the application for renewal of licence reaches the issuing authority at least thirty days before the date on which the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the fee determined by the regulations made by the Authority which shall not be more than rupees two hundred and fifty, and additional fee of an amount determined by the regulations not exceeding rupees one hundred by way of penalty, if the application for renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force.”;

(c) in sub-section (3A), for the proviso, substitute the following:—

“Provided that the Authority may, if satisfied that undue hardship would be caused otherwise, accept any application in contravention of this sub-section on payment by the applicant of a penalty of seven hundred and fifty rupees.”;

(d) in sub-section (4), after clause (d), insert the following:—

“(e) that he does not possess the requisite qualifications and practical training for a period not exceeding twelve months, as may be specified by the regulations made by the Authority in this behalf;

(f) that he has not passed such examination as may be specified by the regulations made by the Authority in this behalf;

Provided that a person who had been issued a licence under sub-section (1) of this section or sub-section (1) of section 64UM shall not be required to possess the requisite qualifications, practical training and pass such examination as required by clauses (e) and (f);

(g) that he violates the code of conduct as may be specified by the regulations made by the Authority.”;

(e) for sub-section (6), substitute the following:—

“(6) The Authority may issue a duplicate licence to replace a licence lost, destroyed or mutilated, on payment of such fee not exceeding rupees fifty as may be determined by the regulations.”;

(f) in sub-section (7),—

(i) for “fifty rupees”, substitute “five hundred rupees”;

(ii) for “one hundred rupees”, substitute “one thousand rupees”;

(g) in sub-section (8), for “fifty rupees”, substitute “five thousand rupees”.

28. Section 42A, in sub-section (1),—

(a) for “Controller or an officer authorised by him”, substitute “Authority or an officer authorised by it”;

(b) for “an application to him”, substitute “an application to it”.

29. After section 42C, insert the following:—

“42D. (1) The Authority or an officer authorised by it in this behalf shall, in the manner determined by the regulations made by the Authority and on payment of the fees determined by the regulations made by the Authority, issue to any person making an application in the manner determined by the regulations, and not suffering from any of the disqualifications herein mentioned, a licence to act as an intermediary or an insurance intermediary under this Act:

Issue of
licence to
intermediary
or insurance
intermediary.

Provided that,—

(a) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4) of section 42, or

(b) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications.

(2) A licence issued under this section shall entitle the holder thereof to act as an intermediary or insurance intermediary.

(3) A licence issued under this section shall remain in force for a period of three years only from the date of issue, but shall, if the applicant, being an individual does not, or being a company or firm any of its directors or partners does not suffer from any of the disqualifications mentioned in clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 42 and the application for renewal of licence reaches the issuing authority at least thirty days before the date on which the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the fee, determined by the regulations made by the Authority and additional fee for an amount determined by the regulations, not exceeding one hundred rupees by way of penalty, if the application for renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force.

(4) No application for the renewal of a licence under this section shall be entertained if the application does not reach the issuing authority before the licence ceases to remain in force:

Provided that the Authority may, if satisfied that undue hardship would be caused otherwise, accept any application in contravention of this sub-section on payment by the applicant of a penalty of seven hundred and fifty rupees.

(5) The disqualifications above referred to shall be the following:—

(a) that the person is a minor;

(b) that he is found to be of unsound mind by a court of competent jurisdiction;

(c) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction:

Provided that, where at least five years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Authority shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause;

(d) that in the course of any judicial proceedings relating to any policy of insurance of the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud dishonestly or misrepresentation against an insurer or an insured;

(e) that he does not possess the requisite qualifications and practical training for a period not exceeding twelve months, as may be specified by the regulations made by the Authority in this behalf;

(f) that he has not passed such examinations as may be specified by the regulations made by the Authority in this behalf;

(g) that he violates the code of conduct as may be specified by the regulations made by the Authority.

(6) If it be found that an intermediary or an insurance intermediary suffers from any of the foregoing disqualifications, without prejudice to any other penalty to which he may be liable, the Authority shall, and if the intermediary or an insurance intermediary has knowingly contravened any provision of this Act may cancel the licence issued to the intermediary or insurance intermediary under this section.

(7) The Authority may issue a duplicate licence to replace a licence lost, destroyed or mutilated, on payment of such fee, as may be determined by the regulations made by the Authority.

(8) Any person who acts as an intermediary or an insurance intermediary without holding a licence issued under this section to act as such, shall be punishable with fine, and any insurer or any person who appoints as an intermediary or an insurance intermediary or any person not licensed to act as such or transacts any insurance business in India through any such person, shall be punishable with fine.

(9) Where the person contravening sub-section (8) is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every director, manager, secretary or other officer of the company, and every partner of the firm who is knowingly a party to such contravention shall be punishable with fine."

30. Section 64UA, in sub-section (1), in sub-clause (a), for "Controller of Insurance", substitute "Chairperson of the Authority".

31. Section 64UB,—

(a) for sub-section (1), substitute the following:—

"(1) The Authority may, by notification in the Official Gazette, make regulations to carryout the purposes of this Part.";

(b) in sub-section (2), for "rules", substitute "regulations";

(c) in sub-section (3), for "Central Government" at both the places where it occur, substitute "Authority";

(d) in sub-section (5), for "Controller of Insurance", substitute "Chairperson of the Authority".

32. Section 64UC, in sub-section (1), in proviso, for "the Controller may, with the previous approval of the Central Government", substitute "the Authority may".

33. Section 64UD, after sub-section (1), insert the following:—

"Provided that the Chairperson of the Authority shall become the Chairman of the Advisory Committee with effect from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and function as such, and any Chairman of the Tariff Committee holding office immediately before such commencement shall cease to be the Chairman."

34. Section 64UJ, in sub-section (5), for "Central Government", wherever it occurs, substitute "Authority".

35. Section 64 UM,—

(a) in sub-section (1),—

(i) in paragraph (B), after "the Insurance (Amendment) Act, 1968", insert "but before the commencement of the Insurance Regulatory and Development Authority Act, 1999";

(ii) after paragraph (B), insert the following:—

"(BA) Every person who intends to act as a surveyor or loss assessor after the expiry of a period of one year from the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall make an application to the Authority within such time, in such manner and on payment of such fee as may be determined by the regulations made by the Authority:

Provided that any licence issued immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999 shall be deemed to have been issued in accordance with the regulations providing for such licence.";

(iii) in paragraph (C), for "as may be prescribed", substitute "as may be determined by the regulations";

(iv) in paragraph (D), in clause (i),—

(A) for item (a), substitute the following:—

"(a) has been in practice as a surveyor or loss assessor on the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, or";

(B) in item (f), for "prescribed", substitute "specified by the regulations made by the Authority";

(b) after sub-section (I), insert—

"(IA) Every surveyor and loss assessor shall comply with the code of conduct in respect of their duties, responsibilities and other professional requirements as may be specified by the regulations made by the Authority."

36. Section 64V,—

(a) in sub-section (I),—

(i) in clause (i), after sub-clause (g), insert the following:—

"(h) such other asset or assets as may be specified by the regulations made in this behalf;";

(ii) in clause (ii),—

(A) in sub-clause (b), in items (i) and (ii), for "40 per cent.", substitute "50 per cent.";

(B) after sub-clause (f), insert the following:—

"(g) such other liability which may be made in this behalf to be included for the purpose of clause (ii).";

(b) for sub-section (2), substitute the following:—

"(2) Every insurer shall furnish to the Authority with his returns under section 15 or section 16, as the case may be, a statement certified by an auditor approved by the Authority in respect of general insurance business, or an actuary approved by the Authority in respect of life insurance business, as the case may be, of his assets and liabilities assessed in the manner required by this section as on the 31st day of March of the preceding year.

(3) Every insurer shall value his assets and liabilities in the manner required by this section and in accordance with the regulations which may be made by the Authority in this behalf."

37. Section 64VA,—

(a) in sub-section (I), for "at all times", substitute "at all times before the commencement of the Insurance Regulatory and Development Authority Act, 1999";

(b) after sub-section (I), insert the following:—

"(IA) Every insurer shall, at all times, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, maintain an excess of the value of his assets over the amount of his liabilities of not less than the amount arrived at as follows (hereinafter referred to in this section referred to as the "required solvency margin"), namely:—

(i) in the case of an insurer carrying on life insurance business, the required solvency margin shall be the higher of the following amounts—

(a) fifty crores of rupees (one hundred crores of rupees in case of re-insurers); or

(b) the aggregate sums of the results arrived at in items (I) and (II) stated below:—

(I) the aggregate of the results arrived at by applying the calculation described in item (A) below (Step I) and the calculation described in item (B) below (Step II):

(A) for Step I—

(A. 1) there shall be taken, a sum equal to a percentage determined by the regulations not exceeding five per cent. of the mathematical reserves for direct business and re-insurance acceptances without any deduction for re-insurance cessions;

(A. 2) the amount of mathematical reserves at the end of the preceding financial year after the deduction of re-insurance cessions shall be expressed as a percentage of the amount of those mathematical reserves before any such deduction; and

(A. 3) the sum mentioned in item (A. 1) above shall be multiplied—

(A.3.1) where the percentage arrived at under item (A. 2) above is greater than eighty-five per cent. (or in the case of a re-insurer carrying on exclusive re-insurance business, fifty per cent.), by that greater percentage; and

(A.3.2) in any other case, by eighty-five per cent. (or in the case of a re-insurer carrying on exclusive re-insurance business, by fifty per cent.);

(B) for Step II—

(B. 1) there shall be taken, a sum equal to a percentage determined by the regulations made by the Authority not exceeding one per cent. of the sum at risk for the policies on which the sum at risk is not a negative figure, and

(B. 2) the amount of sum at risk at the end of the preceding financial year for policies on which the sum at risk is not a negative figure after the deduction of re-insurance cession shall be expressed as a percentage of the amount of that sum at risk before any such deduction, and

(B. 3) the sum arrived at under item (B. 1) above shall be multiplied—

(B. 3.1) where the percentage arrived at under item (B. 2) above is greater than fifty per cent., by that greater percentage; and

(B. 3.2) in any other case, by fifty per cent.

(II) a percentage determined by the regulations made by the Authority of the value of assets determined in accordance with the provisions of section 64V;

(ii) in the case of an insurer carrying on general insurance business, the required solvency margin, shall be the highest of the following amounts:—

(a) fifty crores of rupees (one hundred crores of rupees in case of re-insurer); or

(b) a sum equivalent to twenty per cent. of net premium income;

or

(c) a sum equivalent to thirty per cent. of net incurred claims, subject to credit for re-insurance in computing net premiums and net incurred claims being actual but a percentage, determined by the regulations, not exceeding fifty per cent.:

Provided that if in respect of any insurer, the Authority is satisfied that either by reason of an unfavourable claim experience or because of sharp increase in the volume of the business, or for any other reason, compliance with the provisions of this sub-section would cause undue hardship to the insurer, the Authority may direct, for such period and subject to such conditions, such solvency margin not being less than the lower of the amount mentioned in sub-clause (i) or sub-clause (ii) above, as the case may be.

Explanation.—For the purposes of this sub-section, the expressions—

(i) "mathematical reserves" means the provision made by an insurer to cover liabilities (excluding liabilities which have fallen due and liabilities arising from deposit back arrangement in relation to any policy whereby an amount is deposited by re-insurer with the cedant) arising under or in connection with policies or contracts for life insurance business. Mathematical reserves also include specific provision for adverse deviations of the bases, such as mortality and morbidity rates, interest rates, and expense rates, and any explicit provisions made, in the valuation of liabilities, in accordance with the regulations made by the Authority for this purpose;

(ii) "net incurred claims" means the average of the net incurred claims during the specified period of not exceeding three preceding financial years;

(iii) "sum at risk", in relation to a life insurance policy, means a sum which is—

(a) in any case in which an amount is payable in consequence of death other than a case falling within sub-clause (b) below, the amount payable on death, and

(b) in any case in which the benefit under the policy in question consists of the making, in consequence of death, of the payments of annuity, payment of a sum by instalments or any other kind of periodic payments, the present value of that benefit,

less in either case the mathematical reserves in respect of the relevant policies.";

(c) after sub-section (2), insert the following:—

"(2A) If, at any time an insurer does not maintain the required solvency margin in accordance with the provisions of this section, he shall, in accordance with the directions issued by the Authority, submit a financial plan, indicating a plan of action to correct the deficiency to the Authority within a specified period not exceeding three months.

(2B) An insurer who has submitted a plan under sub-section (2A) to the Authority shall propose modifications to the plan if the Authority considers it inadequate, and shall give effect to any plan accepted by the Authority as adequate.

(2C) An insurer who does not comply with the provisions of sub-section (2A) shall be deemed to be insolvent and may be wound up by the court.";

(d) after sub-section (6), insert the following:—

“(7) Every insurer shall furnish to the Authority his returns under section 15 or section 16, as the case may be, in case of life insurance business a statement certified by an actuary approved by the Authority, and in case of general insurance business a statement certified by an auditor approved by the Authority, of the required solvency margin maintained by the insurer in the manner required by sub-section (1A).”.

38. Section 70, in sub-section (1), for “the Controller a certificate of registration”, substitute “the Authority, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999, a certificate of registration”.

39. Section 95, in sub-section (1), for “In this Part—”, substitute, “In this Part, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999,—”.

40. Section 101A,—

(a) in sub-section (1), for “the Central Government”, substitute “the Authority, with the previous approval of the Central Government.”;

(b) in sub-section (2), for “the Central Government”, substitute “the Authority”.

41. Section 101B,—

(a) in sub-section (1), for “the Central Government”, substitute “the Authority with the previous approval of the Central Government.”;

(b) in sub-section (2), for “prescribed”, substitute “determined by the regulations made by the Authority”.

42. For sections 102 to 105, substitute the following:—

“102. If any person, who is required under this Act, or rules or regulations made thereunder,—

(a) to furnish any document, statement, account, return or report to the Authority, fails to furnish the same; or

(b) to comply with the directions, fails to comply with such directions;

(c) to maintain solvency margin, fails to maintain such solvency margin;

(d) to comply with the directions on the insurance treaties, fails to comply with such directions on the insurance treaties,

he shall be liable to a penalty not exceeding five lakh rupees for each such failure and punishable with fine.

103. If a person makes a statement, or furnishes any document, statement, account, return or report which is false and which he either knows or believes to be false or does not believe to be true,—

(a) he shall be liable to a penalty not exceeding five lakh rupees for each such failure; and

(b) he shall be punishable with imprisonment which may extend to three years or with fine for each such failure.

104. If a person fails to comply with the provisions of section 27 or section 27A or section 27B, or section 27C or section 27D, he shall be liable to a penalty not exceeding five lakh rupees for each such failure.

105. If any director, managing director, manager or other officer or employees of an insurer wrongfully obtains possession of any property or wrongfully applies to any purpose of the Act, he shall be liable to a penalty not exceeding two lakh rupees for each such failure.

Penalty for default in complying with, or act in contravention of, this Act.

Penalty for carrying on insurance business in contravention of sections 3, 7 and 98:

Penalty for false statement in document.

Wrongfully obtaining or withholding property.

Offences by
companies.

105A. (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate, and includes—

(i) a firm; and

(ii) an association of persons or a body of individuals whether incorporated or not; and

(b) “director”, in relation to—

(i) a firm, means a partner in the firm;

(ii) an association of persons or a body of individuals, means any member controlling the affairs thereof.

Penalty for
failure to
comply with
section 32B.

105B. If an insurer fails to comply with the provisions of section 32B, he shall be liable to a penalty not exceeding five lakh rupees for each such failure and shall be punishable with imprisonment which may extend to three years or with fine for each such failure.”.

43. In sections 110A, 110B and 110C, for “Controller” wherever it occurs, substitute “Chairperson of the Authority”.

44. Section 110G, for “Controller” at both the places where it occurs, substitute “Chairperson of the Authority”.

45. Section 110H, in sub-section (1), for “under sections”, substitute “under sections 27D,”.

46. Section 114, in sub-section (2),—

(a) after clause (a), insert the following:—

“(aa) such other percentage of paid-up equity capital in excess of twenty-six per cent of the paid-up equity capital and the period within which such excess paid-up equity capital shall be diverted under sub-section (1) of section 6AA.”;

(b) omit clauses (g) and (h).

47. After section 114, insert the following:—

“114A. (1) The Authority may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder, to carry out the purposes of this Act.

Power of
Authority to
make
regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the matters including fee relating to the registration of insurers under section 3;

(b) the manner of suspension or cancellation of registration under sub-section (5E) of section 3;

(c) such fee, not exceeding five thousand rupees, as may be determined by regulations for issue of a duplicate certificate of registration under sub-section (7) of section 3;

(d) the matters relating to the renewal of registration and fee therefor under section 3A;

(e) the manner and procedure for divesting excess share capital under sub-section (2) of section 6AA;

(f) the preparation of balance-sheet, profit and loss account and a separate account of receipts and payments and revenue account under sub-section (1A) of section 11;

(g) the manner in which an abstract of the report of the actuary to be specified under the fourth proviso to sub-section (1) of section 13;

(h) the form and manner in which the statement referred to in sub-section (4) of section 13 shall be appended;

(i) the time, manner and other conditions of investment of assets held by an insurer under sub-sections (1) and (2) of section 27D;

(j) the minimum information to be maintained by insurer in their books, the manner in which such information should be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto under sub-section (8) of section 33;

(k) the manner for making an application, the manner and the fee for issue of a licence to act as an insurance agent under sub-section (1) of section 42;

(l) the fee and the additional fee to be determined for renewal of licence of insurance agent under sub-section (3) of section 42;

(m) the requisite qualifications and practical training to act as an insurance agent under clause (e) of sub-section (4) of section 42;

(n) the passing of examination to act as an insurance agent under clause (f) of sub-section (4) of section 42;

(o) the code of conduct under clause (g) of sub-section (4) of section 42;

(p) the fee not exceeding rupees fifty for issue of duplicate licence under sub-section (6) of section 42;

(q) the manner and the fees for issue of a licence to an intermediary or an insurance intermediary under sub-section (1) of section 42D;

(r) the fee and the additional fee to be determined for renewal of licence of intermediaries or insurance intermediaries under sub-section (3) of section 42D;

(s) the requisite qualifications and practical training of intermediaries or insurance intermediaries under clause (e) of sub-section (5) of section 42D;

(t) the examination to be passed to act as an intermediary or insurance intermediary under clause (f) of sub-section (5) of section 42D;

(u) the code of conduct under clause (g) of sub-section (5) of section 42D;

(v) the fee for issue of duplicate licence under sub-section (7) of section 42D;

(w) such matters as specified under sub-section (2) of section 64UB relating to the Tariff Advisory Committee;

(x) the matters relating to licensing of surveyors and loss assessors, their duties, responsibilities and other professional requirements under section 64UM;

(y) such other asset or assets as may be specified under clause (h) of sub-section (1) of section 64V for the purposes of ascertaining sufficiency of assets under section 64VA;

(z) the valuation of assets and liabilities under sub-section (3) of section 64V;

(za) the matters specified under sub-section (1A) of section 64VA relating to sufficiency of assets;

(zb) the matters relating to re-insurance under sections 101A and 101B;

(zc) the matters relating to redressal of grievances of policy-holders to protect their interest and to regulate, promote and ensure orderly growth of insurance industry; and

(zd) any other matter which is to be, or may be, specified by the regulations made by the Authority or in respect of which provision is to be made or may be made by the regulations.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.”.

48. Section 116A, for “Central Government”, at both places where they occur, substitute “Central Government, before the date of commencement of the Insurance Regulatory and Development Authority Act, 1999,”.

THE SECOND SCHEDULE

(See section 31)

AMENDMENTS TO THE LIFE INSURANCE CORPORATION ACT, 1956

(31 OF 1956)

1. In the Act, for "Controller" wherever it occurs, substitute "Authority".
2. After section 30, insert the following:—

"30A. Notwithstanding anything contained in this Act, the exclusive privilege of carrying on life insurance business in India by the Corporation shall cease on and from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and the Corporation shall, thereafter, carry on life insurance business in India in accordance with the provisions of the Insurance Act, 1938."

Exclusive
privilege of
Corporation to
cease.

4 of 1938.

THE THIRD SCHEDULE

(See section 32)

AMENDMENT TO THE GENERAL INSURANCE BUSINESS (NATIONALISATION) ACT, 1972

(57 OF 1972)

After section 24, insert the following:—

"24A. Notwithstanding anything contained in this Act, the exclusive privilege of the Corporation and the acquiring companies of carrying on general insurance business in India shall cease on and from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and the Corporation and the acquiring companies shall, thereafter, carry on general insurance business in India in accordance with the provisions of the Insurance Act, 1938."

Exclusive
privilege of
Corporation
and acquiring
companies to
cease.

4 of 1938.

STATEMENT OF OBJECTS AND REASONS

The insurance industry requires a high degree of regulation. The Insurance Act, 1938 provides for the institution of the Controller of Insurance to act as a strong and powerful supervisory and regulatory authority with powers to direct, advise, caution, prohibit, investigate, inspect, prosecute, search, seize, fine, amalgamate, authorise, register and liquidate insurance companies. However, after the nationalisation of the life insurance industry in 1956 and the general insurance industry in 1972, the role of the Controller of Insurance diminished in significance over a period of time.

2. In April, 1993, the Government set up a high-powered committee headed by Shri R.N. Malhotra, former Governor, Reserve Bank of India, to examine the structure of the insurance industry and recommend changes to make it more efficient and competitive keeping in view the structural changes in other parts of the financial system of the economy. The Committee which submitted its report on the 7th January, 1994 felt that the insurance regulatory apparatus should be activated even in the present set up of nationalised insurance sector and recommended, *inter alia*, the establishment of a strong and effective Insurance Regulatory Authority in the form of a statutory autonomous board on the lines of the Securities and Exchange Board of India.

3. The recommendations of the Committee were discussed at different forums including the Consultative Committee of the Parliament attached to the Ministry of Finance, managements of the Life Insurance Corporation, the General Insurance Corporation and its subsidiary companies, trade unions, chambers of commerce and consumer interest groups. The recommendation to set up an autonomous Insurance Regulatory Authority found wide support. In view of the general support received, the then Government decided to bring in a legislation to establish an independent Regulatory Authority for the insurance industry. Since enacting legislation for creating the Insurance Regulatory Authority was to take time, the then Government constituted through a Government resolution an Interim Insurance Regulatory Authority pending the enactment of a comprehensive legislation. The Chairman, Insurance Regulatory Authority has been notified as Controller of Insurance under the Insurance Act, 1938. The said Interim Insurance Regulatory Authority at present is discharging certain functions and exercising powers of the Controller.

4. In pursuance of the Budget Speech in July, 1996, the then Government introduced on the 20th December, 1996, the Insurance Regulatory Authority Bill, 1996 for establishment of an authority to protect the interest of holders of insurance policies and to regulate, promote and ensure orderly growth of the insurance industry and for matter connected therewith or incidental thereto. The Bill was referred to the Department related Standing Committee on the Ministry of Finance. The Committee submitted its report on the 9th May, 1997. However, the said Bill incorporating therein the recommendations of the said Standing Committee was taken for consideration but could not be passed and the Bill was withdrawn by the then Government.

5. In order to provide better insurance coverage to our citizens and also to augment the flow of long-term resources for financing infrastructure, in the Budget Speech, 1998, the policy of the Government was announced to open up the insurance sector and also to establish a Statutory Regulatory Authority. Accordingly, the Insurance Regulatory Authority Bill, 1998 was introduced in the previous Lok Sabha on the 15th December, 1998 providing for setting a Statutory Insurance Regulatory Authority and containing three Schedules incorporating amendments to the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the General Insurance Business (Nationalisation) Act, 1972 to permit the entry of private Indian companies into the insurance sector and to make certain consequential amendments to the Insurance Act, 1938. The Bill was referred to the Standing Committee on Finance on the 4th January, 1999 for examination and report. The Standing Committee

while recommending the Bill suggested some amendments. These were accepted by the Government and amendments to the Bill were circulated on the 18th March, 1999. However, the Bill could not be taken up for consideration consequent on the dissolution of the Lok Sabha.

6. It is now proposed to re-introduce a fresh Bill by incorporating the provisions of the Insurance Regulatory Authority Bill, 1998 and the amendments suggested by the Standing Committee on Finance. The Bill will be titled Insurance Regulatory and Development Authority Bill on the basis of the recommendation of the Standing Committee. In the main text of the Bill, provisions are incorporated to give a Statutory character to the Interim Insurance Regulatory Authority and the Three Schedules contain amendments to the Insurance Act, 1938, amendment to the Life Insurance Corporation Act, 1956 and the General Insurance Business (Nationalisation) Act, 1972.

7. The proposed Authority shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract. It will consist of a Chairperson and other members not exceeding nine in number, of whom not more than five shall serve full time, to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience of life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which in the opinion of the Central Government shall be useful to the Authority. The Chairperson and other whole-time members, shall hold office for a term of 5 years or until the age of 65 years in the case of Chairperson and 62 years in the case of other whole-time members whichever is earlier and they shall be eligible for reappointment subject to age consideration. A part-time member shall hold office for a term not exceeding 5 years.

8. The duties, powers and functions of Authority, *inter alia*, shall include:—

(a) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;

(b) protection of the interests of the policy holders in matters concerning assigning of policy, nomination by policy holders, insurable interest, settlement of insurance claim, surrender value of policy, and other terms and conditions of contracts of insurance;

(c) specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;

(d) specifying the code of conduct for surveyors and loss assessors;

(e) promoting efficiency in the conduct of insurance business;

(f) promoting and regulating professional organisations connected with the insurance and reinsurance business;

(g) levying fees and other charges for carrying out the purposes of this Act;

(h) calling for information from, undertaking inspection of, conducting enquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organisations connected with the insurance business;

(i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938;

(j) specifying the form and manner in which books of account shall be maintained and statement of accounts will be rendered by insurers and other insurance intermediaries;

- (k) regulating investment of funds by insurance companies;
- (l) regulating maintenance of margin of solvency;
- (m) adjudication of disputes between insurers and intermediaries or insurance intermediaries;
- (n) supervising the functioning of the Tariff Advisory Committee;
- (o) specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organisations referred to in clause (f);
- (p) specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and
- (q) exercising such other powers as may be prescribed.

9. The powers and functions mentioned above would enable the Authority to perform the role of an effective watchdog and regulator for the insurance sector in India. To enable the Authority to function in a truly independent manner and discharge its assigned responsibilities effectively, it is proposed to vest the Authority with statutory status.

10. The First Schedule Contains consequential provisions relating to amendments to the Insurance Act, 1938 to update certain outdated provisions and for smooth and efficient regulation of the opened up sector. The Second and Third Schedules contain amendment to the Life Insurance Corporation Act, 1956 and the General Insurance Business (Nationalisation) Act, 1972 respectively to remove the exclusive privilege of the nationalised companies to transact insurance business.

11. The Bill seeks to achieve the above objects.

YASHWANT SINHA.

NEW DELHI;
The 21st October, 1999.

Notes on clauses

Clause 2 defines the various expressions occurring in the Bill.

Clause 3 provides for the establishment of the Insurance Regulatory and Development Authority by the Central Government as a body corporate. The head office of the Authority shall be at such place as the Central Government may decide from time to time.

Clause 4 provides that the Authority shall consist of a Chairperson, not more than five whole-time members and not more than four part-time members, to be appointed by the Central Government.

Clause 5 provides that the Chairperson and other whole-time members shall hold office for a term of five years or until the age of sixty-five years in the case of Chairperson and sixty-two years in the case of other whole-time members, whichever is earlier, and a part-time members shall hold office for a term not exceeding five years.

Clause 6 provides that the Central Government may, after giving a reasonable opportunity of being heard in the matter, remove from office the Chairperson and members of the Authority in certain circumstances.

Clause 7 provides that the salary, allowances and other terms and conditions of service of the Chairperson and whole-time members and allowances to part-time members will be prescribed by the Central Government and that they shall not be varied to their disadvantage, after appointment.

Clause 8 provides that the Chairperson and members shall be ineligible for appointment in Central or State Governments or any private company in the insurance sector for a period of two years from the date on which they cease to hold office as such without prior approval of the Central Government.

Clause 9 provides that the Chairperson shall have the powers of general superintendence and directions of all administrative matters of the Authority.

Clause 10 contains detailed provisions regarding conduct of the meetings of the Authority.

Clause 11 provides for certain conditions which will not invalidate the proceedings of the Authority.

Clause 12 empowers the Authority to appoint officers and other employees and determine their terms and conditions of service through regulations.

Clause 13 provides for transfer of assets, liabilities, etc., of the Interim Insurance Regulatory Authority to the Insurance Regulatory and Development Authority.

Clause 14 provides that the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and prescribes its specific powers and functions.

Clause 15 provides for grants to the Authority by the Central Government.

Clause 16 provides for constitution of the Insurance Regulatory and Development Authority Fund and crediting thereto all Government grants, fees and charges received by the Authority and its appropriation for making payments.

Clause 17 provides that the Authority shall maintain its accounts in the form prescribed by the Central Government in consultation with the Comptroller and Auditor General of India and that the accounts will be audited by the Comptroller and Auditor General of India with the same rights and privileges as in the case of audit of Government accounts. It also provides that the accounts of the Authority as certified by the Comptroller and

Auditor General of India together with the audit report thereon shall be laid before each House of Parliament every year.

Clause 18 provides that the Authority shall be bound by the directions of the Central Government on questions of policy and that the decisions of the Central Government, whether a question is one of policy or not, shall be final.

Clause 19 provides that the Central Government may, by notification and for reasons specified therein supersede the Authority, for a period not exceeding six months, in certain circumstances and during the period of supersession appoint a person to act as the Controller of Insurance under the Insurance Act, 1938. It also provides for reconstitution of the Authority before the expiry of the period of supersession and that a copy of the notification for supersession and a full report on the action taken shall be laid before each House of Parliament.

Clause 20 provides for furnishing of returns, etc., by the Authority to the Central Government.

Clause 21 provides that the Chairperson, members, officers and employees of the Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 22 provides for usual provisions relating to the protection of action taken in good faith.

Clause 23 provides for delegation of powers of the Authority.

Clause 24 confers on the Central Government the power to make rules for carrying out the provisions of the Bill.

Clause 25 provides for the establishment of Insurance Advisory Committee which will consist of not more than 25 Members excluding the Chairperson and the members of the Authority who will be *ex-officio* Members.

Clause 26 confers on the Authority the power to make regulations consistent with the provisions of the Bill.

Clause 27 provides that the rules made by the Central Government and regulations made by the Authority shall be laid before each House of Parliament.

Clause 28 provides that the provisions of this Bill shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Clause 29 seeks to empower the Central Government to remove difficulties which may arise in giving effect to the provisions of the Bill.

Clause 30 seeks amendments of certain provisions of the Insurance Act, 1938 in the manner as set out in the First Schedule to the Bill.

The amendments to the Insurance Act, 1938 are consequential in nature to empower the Insurance Regulatory and Development Authority to effectively regulate, promote and ensure orderly growth of the insurance industry. The amendments *inter alia* provide for the substitution of the word "Controller" by the word "Authority" and substitution of the word "Central Government" by the word "Authority" in certain sections of the Insurance Act, 1938.

It also provides for certain definitions including definition of an Indian insurance company.

The other consequential amendments relate to empowering the authority in respect of registration of insurers, percentage of equity capital to foreign company, investment provisions, regulation of licence to intermediaries or insurance intermediaries and power of the Authority to make regulations.

Clause 31 seeks to amend the Life Insurance Corporation Act, 1956, in the manner as set out in the Second Schedule.

The amendment provides that the exclusive privilege of the Life Insurance Corporation shall cease so as to enable other Indian insurance companies to do life insurance business.

Clause 32 seeks to amend the General Insurance Business (Nationalisation) Act, 1972 in the manner as set out in the Third Schedule.

The amendment provides that the exclusive privilege of the General Insurance Corporation and the four subsidiary companies shall cease so as to enable other Indian insurance companies to do non-life insurance business.

FINANCIAL MEMORANDUM

The Central Government proposes to set up an independent statutory Insurance Regulatory and Development Authority under clause 3 of the Bill. Recurring expenditure towards salary and allowances, etc., of the Chairperson and other members under clause 7 will be of the order of Rs. 62 lakhs per annum and the officers and employees of the Authority under clause 12 will be of the order of Rs. 160 lakhs per annum. Other recurring expenditures by way of rent, maintenance, training, etc., will be of the order of Rs. 200 lakhs per annum. Non-recurring expenditure by way of purchase of accommodation, furniture and fixtures, office equipment, vehicle, etc., will be approximately of the order of Rs. 855 lakhs.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 19 of the Bill confers powers upon the Central Government to supersede, by notification, the Authority in the circumstances specified in that clause. This Clause further requires that a copy of such notification and a full report of any action taken under this clause and the circumstances leading to such supersession shall be laid before each House of Parliament at the earliest.

2. Clause 24 of the Bill empowers the Central Government to make rules to provide, *inter alia*, for the salary and allowances payable to and other terms and conditions of service of the Chairperson and other members, the additional powers and functions that may be performed by the Authority, the form of annual statement of accounts to be prepared by the Authority, the form and manner in which and the time within which, returns and statements and particulars are to be prepared and furnished by the Central Government, the matters on which the Insurance Advisory Committee shall advise the Authority and any other matter which is required to be, or may be prescribed, or in respect of which provision is to be or may be made by rules.

3. Clause 26 of the Bill empowers the Authority to make regulations to provide for, *inter alia*, the times and places of meeting of the Authority and the procedure to be followed at such meetings including the quorum necessary for the transaction of business, the terms and conditions of service of officers and employees of the Authority and powers and functions which may be delegated to the Committees of Members of the Authority.

4. Clause 30 of the Bill proposes to amend the Insurance Act, 1938 which, *inter alia*, proposes to insert section 6AA in that Act. The said section 6AA proposes to confer power upon the Central Government to prescribe the percentage of the paid-up equity capital in excess of twenty-six per cent., which the promoter shall at any time hold in an Indian insurance company. This clause further proposes to confer power upon the Central Government to prescribe the period within which such excess paid-up capital shall be divested by the promoters of such Indian insurance company.

This Clause further proposes to amend the Insurance Act, 1938 which, *inter alia*, empowers the Authority to make regulations in respect of the matter relating to the registration of insurers under section 3; the manner of suspension or cancellation of registration under sub-section (5E) of section 3; determination fees, not exceeding five thousand rupees for issue of a duplicate certificate of registration under sub-section (7) of section 3; the matters relating to renewal of registration under section 3A; the manner of; and procedure for, divesting excess share capital under sub-section (2) of section 6AA; preparation of balance-sheet, profit and loss account and a separate account of receipts and payments and revenue account under sub-section (1A) of section 11; the manner in which an abstract of the report of the actuary to be specified under the fourth proviso to sub-section (1) of section 13; the form and manner in which the statement referred to in sub-section (4) of section 13 shall be appended; the time, manner and the other conditions of investment of assets held by an insurer under sub-sections (1) and (2) of section 27D; the minimum information to be maintained by insurers in their books, the manner in which such information should be maintained, the checks and other verifications to be adopted by insurers in that connection and all other matters incidental thereto under sub-section (8) of section 33; the manner for making an application and the manner and the fee for issue of a licence to act as an insurance agent under sub-section (1) of section 42; the fee and the additional fee to be determined for renewal of licence of insurance agent under sub-section (3) of section 42; the requisite qualifications and practical training to act as an insurance agent under clause (e) of sub-section (4) of section 42; passing of examination to act as an insurance agent under clause (f) of sub-section (4) of section 42 code of conduct under clause (g) of sub-section (4) of section 42; fee not exceeding rupees fifty for issue of

duplicate licence under sub-section (6) of section 42; the manner in which and the fee for issue of a licence to an intermediary or an insurance intermediary under sub-section (1) of section 42D; the fee to be determined for renewal of licence of insurance intermediaries under sub-section (3) of section 42D; the period for specifying the requisite qualifications, code of conduct and practical training of intermediaries or insurance intermediaries under clause (e) of sub-section (5) of section 42D; the code of conduct under clause (g) of sub-section (5) of section 4 the matter relating to issue of duplicate licence under sub-section (7) of section 42D; the matters as specified under sub-section (2) of section 64UB relating to the Tariff Advisory Committee; the matter relating to licensing of surveyors and loss assessors, their duties, responsibilities and other professional requirements under section 64UM to specify such other asset or assets under clause (h) of sub-section (1) of section 64V for the purposes of ascertaining sufficiency of assets under section 64VA; valuation of assets and liabilities under sub-section (3) of section 64V, matters specified under sub-section (1A) of section 64VA relating to sufficiency of assets; the matter relating to re-insurance under sections 101A and 101B; matters relating to redressal of grievances of policy-holders to protect their interest and to regulate, promote and ensure orderly growth of insurance industry; any other matter which is to be, or may be, specified by regulations or in respect of which provision is to be made or may be made by regulations.

5. The rules and regulations made, shall be laid, as soon as may be, after they are made, before each House of Parliament.

6. The matter in respect of which rules and regulations may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

G.C. MALHOTRA,
Secretary-General.